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December 11, 2008

DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS

Hearing Officer Decision

Name of Case: Personnel Security Hearing

Date of Filing: July 10, 2008

Case Number: TSO-0649

This Decision concerns the eligibility of XXXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the Department of Energy's (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."¹ In this Decision, I will consider whether, on the basis of the testimony and other evidence in the record of this proceeding, the individual should be granted access authorization. As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the DOE should not grant the individual access authorization at this time.

I. Background

The individual has, in the past, been involved in a number of incidents related to his use of alcohol. Based in part on those incidents, the DOE Local Security Office (LSO) conducted a Personnel Security Interview (PSI) with the individual on December 11, 2007. Exhibit 10. Because the security concern remained unresolved after the PSI, the LSO requested that the individual be interviewed by a DOE consultant psychiatrist (DOE psychiatrist). See Exhibit 6. The DOE psychiatrist evaluated the individual on March 13, 2008, and issued a report on March 20, 2008. See Exhibit 5. The LSO ultimately determined that the derogatory information concerning the individual created a substantial doubt about his eligibility for an access authorization, and that the doubt could not be resolved in a manner favorable to him. Accordingly, the LSO proceeded to obtain authority to initiate an administrative review proceeding.

The administrative review proceeding began with the issuance of a Notification Letter to the individual. See 10 C.F.R. § 710.21. That letter informed the individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for access authorization. Specifically, the DOE characterized this information as indicating that the individual has been, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist as alcohol dependent or as suffering from alcohol abuse. Exhibit 1 (citing 10 C.F.R. § 710.8(j)).

¹ Access authorization is defined as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

The Notification Letter informed the individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt regarding his eligibility for access authorization. The individual requested a hearing, and the LSO forwarded the individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Hearing Officer in this matter on August 4, 2008.

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the individual, his wife, his mother, a friend and coworker, a licensed professional counselor, and the DOE psychiatrist. The DOE Counsel submitted 11 exhibits prior to the hearing, and counsel for the individual presented four exhibits.

II. Regulatory Standard

A hearing under Part 710 is held "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization," *i.e.*, "to have the substantial doubt regarding eligibility for access authorization resolved." 10 C.F.R. § 710.21(b)(3), (6). It is my role as the Hearing Officer to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to a person's access authorization eligibility in favor of the national security. *Id.*

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c).² After due deliberation, I have determined that the individual should not be granted access authorization. The specific findings that I make in support of this decision are discussed below.

III. The Notification Letter and the Security Concerns at Issue

As the bases for security concerns under Criterion J, the Notification Letter cites the following:

- (1) The DOE psychiatrist concluded that the individual met criteria for alcohol abuse in 1999 and from 2002 to 2006 and, as of the date of her report, met partial criteria for alcohol dependence. Exhibit 6 at 15. The DOE psychiatrist also opined that the individual "has been a user of alcohol habitually to excess from the time he

² Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding his conduct, to include knowledgeable participation, the frequency and recency of his conduct, the age and maturity at the time of the conduct, the voluntariness of his participation, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the motivation for his conduct, the potential for pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

started drinking at age 16, and admittedly until 2006, and that he continued to drink to excess periodically until” the date of her report. *Id.*

(2) On December 26, 2006,³ police arrested and charged the individual with Simple Assault/Domestic Violence. He admitted drinking eight beers prior to the incident.

(3) In 2004, military police arrested him regarding a domestic violence incident. He admitted drinking six beers prior to the incident.

(4) In December 2003, police arrested and charged him with Public Intoxication. He admitted consuming eight or nine beers prior to the incident.

(5) In 2002, military police cited him for Minor in Possession of Alcohol. He admitted drinking prior to the incident.

(6) In 2000, police cited him for Minor in Consumption. He admitted drinking prior to the incident.

(7) In 1999, a state trooper cited him for Minor in Possession and Minor in Consumption of Alcohol. He admitted drinking five or six beers prior to the incident.

(8) The individual admitted experiencing hangovers due to his use of alcohol.

(9) He admitted his mother and wife expressed concern regarding his alcohol use.

(10) He admitted his alcohol consumption hurt his marriage and his children because he drank instead of spending time with his family.

(11) He admitted that when his parent's divorced in 2002 to 2003, he drank more than he should have and that he had a big problem with alcohol.

Exhibit 1.

I find that the information set forth above, none of which is in dispute, constitutes derogatory information that raises legitimate questions regarding the individual's eligibility for access authorization under Criterion J. The excessive consumption of alcohol is a security concern because that behavior can lead to the exercise of questionable judgment and the failure to control impulses, which in turn can raise questions about a person's reliability and trustworthiness. Guideline G of the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*

³ The Notification Letter stated that the date of this arrest was December 26, 2007. This is clearly a typographical error, as the documents cited by the Notification Letter, including two documents dated prior to December 26, 2007, all indicate that the arrest occurred on December 26, 2006. *See, e.g.*, Exhibit 5 (October 30, 2007 Case Evaluation).

issued on December 29, 2005 by the Assistant to the President for National Security Affairs, The White House (Adjudicative Guidelines).

IV. Hearing Testimony

A. The Individual

The individual confirmed the occurrence of each of the alcohol-related events set forth in the Notification Letter. Transcript [hereinafter Tr.] at 22-24. He acknowledged that, in 2002 and 2003, around the time of his parents' divorce, he drank on a daily basis. *Id.* at 34-35. The individual testified that, after his most recent alcohol-related incident in December 2006, he felt that he "needed to slow down" his drinking because he "was hurting my family and myself at the same time." *Id.* at 25. Though he acknowledged two occasions in 2007 when he drank to the point of intoxication, he testified that he had dramatically reduced his alcohol consumption during the period from December 2006 to March 2008, when he was evaluated by the DOE psychiatrist. *Id.* at 31-32.

The individual testified that he decided to quit drinking altogether after going through two interviews in connection with his application for a clearance, both of which focused on his history of alcohol use, and then being referred to the DOE psychiatrist and "seeing what she . . . was asking me, . . ." *Id.* at 49. On his way home from the March 2008 psychiatric evaluation, "I just believed that . . . there was an issue there, and then I just -- I had the willingness to stop drinking. Me and my wife sat down and had a heart-to-heart talk and realized this isn't the road for it, if we want to raise our children right." *Id.* at 49-50. He testified that he has not had a drink since the evaluation. *Id.* at 25-26. He believes that he is "strong enough" to refrain from drinking even when he is around people who are drinking, as he stated he recently did at his brother's wedding. *Id.* at 47.

The individual also testified that he had completed 50 hours of outpatient treatment through his employer's Employee Assistance Program, *Id.* at 28, and he provided a copy of his certificate of completion of that program, dated August 4, 2008. Exhibit B. The individual stated that there is an aftercare component of that treatment "where I need to show up every Thursday. Due to work, that hasn't -- and my schedule, it's been kind of hard." Tr. at 45.

On September 16, 2008, the individual began going to meetings of Alcoholics Anonymous (AA), *id.* at 28, has a sponsor, *id.* at 29, and estimated at the October 7, 2008, hearing that he had attended approximately 20 meetings. *Id.* at 43.⁴ He testified that he believes he needs AA and plans to continue attending. *Id.* at 44.

B. The Individual's Wife

The individual's wife has known the individual for approximately eight years, and has been married to him since December 2003. *Id.* at 56; Ex. 9 at 23. Their first child was born in September 2002,

⁴ At the close of the hearing, I requested that the individual provide a copy of his record of AA attendance, *id.* at 181, though the individual testified that it would not document every meeting he attended, as he did not bring his attendance sheet to every meeting. *Id.* at 53. The individual provided a copy of this record, which documented his attendance at 12 meetings prior to the hearing.

when the individual was away at Marine boot camp, after which he was stationed overseas. Ex 9 at 20, 26; Tr. at 57. In 2004, the family was able to live together while the individual was stationed in the United States. Ex. 9 at 17, Tr. at 57. It was during 2004 that the individual was arrested by Military Police, regarding what the Notification Letter describes as a “domestic violence incident.” Ex. 1 at 1. The individual’s wife testified that the individual had been drinking, and she called the police because “I wanted to leave, and he didn’t want me to leave, . . .” Tr. at 77.

She testified that, prior to the individual’s more recent arrest in December 2006, she and the individual had as guests in their house the individual’s sister and brother-in-law. Tr. at 59. “We were playing like a drinking game and just hanging out, and his brother-in-law decided he was going to leave, and he had been drinking pretty much the whole day.” *Id.* According to the individual’s wife, his brother-in-law was going to drive home with his wife and one-year-old daughter (the individual’s sister and niece), and the individual “tried to get him to stay, or not to take her, and he wasn’t willing not to, he wanted to take her, so it caused an issue.” *Id.*

From there, everything was really misunderstood, you know. We both had been drinking, so we weren’t very -- in our right mind.

I made -- he was trying to leave with the children, and so I got a little irate, because I was already mad about everything that happened, and I called the police, and they came and they made their own assumptions.

Id. at 60. The individual’s wife maintains that the individual has never hit her. *Id.* at 60-61.⁵

The individual’s wife testified that, while the individual drank fairly regularly prior to his December 2006 arrest, he reduced his drinking after the incident, *id.* at 63, and that after he met with the DOE psychiatrist in March 2007, “with all those incidents on paper, it just made him realize, ‘Wow, you know, I can’t believe all that stuff happened because of alcohol,’ and . . . he just made a decision that that’s not what kind of life he wants to live anymore.” *Id.* at 64. According to the individual’s wife, the last time her husband had a drink was March 12, 2008. *Id.* She also stopped drinking at the same time, and testified that they do not keep alcohol in their house. She testified regarding the individual’s participation in the EAP outpatient treatment program and his attendance at AA meetings. *Id.* at 65. “[H]e goes every day to AA, and he’s doing everything to help, you know, and then we just surround ourselves with people who don’t drink and family and just with good people.” *Id.* at 65-66.

The individual’s wife described her husband as “productive, more involved” and “more dependable” since he quit drinking. *Id.* at 64, 76. When they go to a function where alcohol is being served, “he has the support of me and whoever is with us, that we support him in that, and if it’s too uncomfortable for him or whatever, we can leave, we don’t have to stay there.” *Id.* at 66. The individual’s wife believes her husband will continue to abstain from drinking, describing him as “very strong willed, and he -- when he commits to something, he does it and he sticks with it.” *Id.* at 74.

⁵ During the December 11, 2007, PSI, the individual stated that he had grabbed his wife’s arm during both the 2006 and 2004 incident, and after he told this to the police in both instances, he was identified as the aggressor and arrested. Ex. 10 at 16, 23, 30-32.

C. The Individual's Mother

The individual's mother testified that her son "hasn't had alcohol in his life since -- I believe since March, . . ." *Id.* at 80. "[E]ver since he told me about this alcohol problem, I thought, well, I never saw it, but he's positive, he's been a vessel to his children, he's involved with his children, he's involved -- he's found a higher authority in his life." *Id.* at 81. She testified as to her knowledge of her son's participation in outpatient treatment and AA. *Id.* at 80-81. She stated that she saw her son enjoy his brother's recent wedding without drinking. *Id.* at 82. She visits her son's home every two to three weeks and testified that she has not seen alcohol in the home. *Id.* at 85.

D. The Individual's Friend and Coworker

The friend of the individual who testified at the hearing has known the individual for the last one and one-half years, and has worked with him during the same period of time. *Id.* at 104. The only time he ever drank with the individual was at a Super Bowl party in 2007 when the individual drank "three or four beers at the most . . ." *Id.* at 107, 114. He testified that, after the individual was evaluated by the DOE psychiatrist in March 2008, "he said that he wanted to stop drinking because he knew that he had to make a change in his life . . . , and I think he's made an outstanding change, you know, he's more involved with his family." *Id.* at 107-08. "[H]e's talked about going to AA meetings . . . he's more into living it, more involved and talking about God, . . ." *Id.* at 108.

The individual's friend testified that he has been to the individual's home four or five times, and has never seen alcohol there. *Id.* at 113-14. He stated that he has never seen the individual show up to work with a hangover or under the influence of alcohol. *Id.* at 115. He testified that he believes he is handling well the stress of the current proceeding. *Id.* at 116. He stated that he is "trying to be a good friend to him," *id.* at 109, and

whatever I have to do to do it, you know, you know, not promoting alcohol, not having any alcohol around and stuff like that. You know, if I have to drive him to AA classes, then I'll do that, you know. Whatever I need to do to get him there, you know, to that stage where he needs to be, hey, I'm there for you, you know.

Id. at 111.

E. Licensed Professional Counselor

The licensed professional counselor who testified at the hearing is the clinical director of the EAP outpatient treatment program that the individual completed. *Id.* at 95. She verified the individual's active participation in the program, which consisted of four two and one-half hour sessions per week for five weeks. *Id.* at 92, 96. She stated that the individual was diagnosed as suffering from Alcohol Dependence, under the criteria set forth in the American Psychiatric Association's Diagnostic and Statistical Manual, Fourth Edition, Text Revision (DSM). *Id.* at 96.⁶

⁶ The counselor testified that the individual met five of the seven DSM criteria for Alcohol Dependence, but did not "meet criteria for withdrawal symptoms, and he did not meet the criteria for preoccupation or extended periods of time spent obtaining or using the substance." *Tr.* at 103.

At the time of the individual's discharge, the outpatient program provided him recommendations for follow-up treatment, including "AA attendance three times a week, aftercare one time weekly, and abstinence. Also, to get a sponsor in the 12-step program." *Id.* at 97. The weekly aftercare session meets each Thursday evening, and is available to all who complete the outpatient program. "[T]hey can come as long as they need to come or want to come, but we usually recommend that they attend for a 12-month period following completion of the program." *Id.* As of the October 7, 2008 hearing, however, the individual had not attended any of the weekly aftercare sessions since completing the outpatient program on August 4, 2008. *Id.* at 97-98.

The counselor testified that if the individual were "attending AA regularly, if he has a sponsor and is working the program actively, then he could forgo an aftercare program." *Id.* at 99. On cross-examination by the DOE Counsel, however, she characterized AA as "a support group that is nontherapeutically led. . . . It is not treatment." *Id.* at 101. By contrast, she described aftercare as "therapeutically led. . . . So do I -- do I think someone needs to go through aftercare? The answer is yes." *Id.*

F. DOE Psychiatrist

The DOE psychiatrist testified that, at the time of her March 2008 evaluation of the individual, he did meet "the [DSM] criteria for a diagnosis of alcohol abuse in the past, but not within the 12 months of my interview; . . ." *Id.* at 121. According to the psychiatrist, the individual also "met two out of the three needed criteria for alcohol dependence, and there was a third that was suspect, . . ." *Id.* Regarding the question posed to her by DOE as to whether the individual has been or is a user of alcohol habitually to excess, the psychiatrist testified that "the correct answer to that question was yes, because I've shown in the body of my report, also admitted by the individual, that he had periods of time in his life that he had continued -- he had habitually engaged in drinking to excess." *Id.* at 121-22.

In her report, the psychiatrist responded "no" to the question of whether there was, in the case of the individual, adequate evidence of rehabilitation or reformation. According to the psychiatrist, this was because of recent incidents of intoxication, the fact that "he had never had the benefit of participating in any rehabilitative treatment program for any alcohol use disorder," the individual's limited understanding of the extent of his problem, and "that his attempt to control his drinking was fragile, at best, at that time." *Id.* at 122-23.

The psychiatrist was present during the entire hearing, and after having heard all of the testimony described above, she concluded that, "with additional information now, . . . the diagnosis of alcohol dependence probably has been met in the case of" the individual. *Id.* at 127. She explained that

in my discussion of the criteria, remember, I checked off two out of three, and all we need is a third, and the one that caught my attention with [the licensed professional counselor]'s response is the fact that they had checked off -- and, again, this is most likely based on his report to them -- the criteri[on] number six, which is important

social, occupational, or recreational activities are given up or reduced because of substance use.

Id. at 125-26. Regarding this criterion, the psychiatrist noted that the individual “had admitted in previous interviews that the drinking had hurt his family, because he could have spent more time with them instead of spending the time drinking with his buddies,” but that he had “minimized that” in his interview with the psychiatrist. *Id.* at 126.

The change in the DOE psychiatrist’s diagnosis did not, however, change her treatment recommendations for the individual. This is because, according to the psychologist, when an individual “has a very solid history of alcohol abuse, and at the same time meets partial criteria for alcohol dependence at a given point in time, most prudent addictionologists and clinicians would give treatment as if they are already alcohol dependent,” due to the high risk that the such an individual will in the future “turn out to be alcohol dependent.” *Id.* at 126-27.

Thus, the psychiatrist recommended in her report that the individual must, to demonstrate adequate evidence of rehabilitation,

complete a minimum of 50 hours of a professionally led substance abuse treatment program, for minimum of six months, including what is called "aftercare" and be completely abstinent from alcohol and all non-prescribed controlled substances for minimum of 2 years. Alternatively, he could enroll in an Alcohol Education Program and submit voluntarily to a monitored abstinence agreement program through his employer or EAP, for a minimum of one year, followed by one year of abstinence after the completion of the program.

Exhibit 6 at 16. Were the individual to fulfill the above requirements for adequate rehabilitation, “2 years of absolute sobriety would be necessary to show adequate evidence of reformation.” *Id.* Otherwise, “3 years of absolute sobriety would be necessary to show adequate evidence of reformation.” *Id.*

Assuming that the individual had not consumed alcohol since March 2008, he had achieved approximately seven months of sobriety as of the time of the hearing. Given this, and the other steps taken by the individual during this period, the DOE psychiatrist stated that the individual was doing “a great job at this time.” Tr. at 130. She noted that the individual had shown an “improvement of insight” and stated that she was “glad to hear that his wife had supported him by not drinking, just to support him.” *Id.* at 131.

Regarding the need for the individual to take advantage of the weekly EAP aftercare meetings, which the individual had not done, the DOE psychiatrist disagreed with the testimony of the licensed professional counselor that AA is not “treatment.” *Id.* at 145. However, she noted that the aftercare meetings have the advantage, relative to AA, of being professionally led. *Id.*

While recognizing the progress the individual had made, the DOE psychiatrist stressed the length of the individual’s time in recovery as a “very important” consideration. *Id.* at 129. “So I believe that

he had started the rehabilitation program, but his reformation is too short a time for me to consider that what we are seeing is a permanent change.” *Id.* at 131. Thus, she concluded that the individual “has not yet achieved adequate rehabilitation and reformation for me to say that the risk of relapse is very low or acceptable to the foreseeable future,” *id.*, and that “because of the early stage in recovery, I would still consider that the probability of relapse in the immediate foreseeable future is still moderate.” *Id.* at 172.

V. Hearing Officer Evaluation of Evidence

In his closing argument, *id.* at 174, counsel for the individual referenced Paragraph 2(a) of the Adjudicative Guidelines, which describes the adjudication process as “the careful weighing of a number of variables known as the whole-person concept.” Adjudicative Guidelines at ¶ 2(a). He also urged my consideration of the specific factors set forth in the same section of the guidelines. Tr. at 174-78. I have considered each of those factors in this case. They are, in fact, the very same factors that the Part 710 regulations require me to consider in every case. 10 C.F.R. § 710.7(c); *see supra* note 2.

I note, for example, as pointed out by counsel for the individual, that the least recent of the events cited in the Notification Letter took place nine years ago. On the other hand, there is a clear pattern in this case of alcohol-related incidents, stretching from 1999 to late 2006, less than two years ago. I further recognize that, from all available evidence, the individual cut back on his consumption of alcohol following his 2006 arrest, and has been abstinent since March 2008. The individual has, by all accounts, made impressive progress in the time since, as acknowledged by the DOE psychiatrist in her testimony. Still, I am troubled by the fact that the individual has not taken full advantage of the treatment opportunities available to him, specifically the weekly aftercare meetings, none of which he had attended. Both the licensed professional counselor and the DOE psychiatrist testified as to the value of these meetings.

Taking into account all of these factors, I also give significant weight to the opinion of the DOE psychiatrist as to the individual’s prognosis. *See* Adjudicative Guidelines at ¶ 23(d) (citing a favorable prognosis by a duly qualified medical professional as a condition that could mitigate a security concern related to alcohol consumption). The individual clearly has not yet fulfilled the psychiatrist’s treatment recommendations, which would apply to the individual regardless of whether he meets sufficient criteria to be diagnosed as alcohol dependent, and which require at least two years of abstinence. For this reason, having considered the individual’s entire history, the DOE psychiatrist characterized the risk of relapse as being “moderate,” rather than “very low.”

Ultimately, my decision must be based on an assessment of future risk. If I am to err in making this predictive assessment, I must err on the side of national security. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting of security clearances indicates “that security determinations should err, if they must, on the side of denials”). With this in mind, while I commend the individual for the progress he has made thus far, I believe the risk that he will drink in the future is not yet low enough that he should be granted a clearance at this time.

VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises security concerns under Criterion J. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I have found that the individual has not brought forth sufficient evidence to sufficiently mitigate the security concerns advanced by the LSO. I therefore cannot find that granting the individual access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I have determined that the individual should not be granted access authorization. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Steven J. Goering
Hearing Officer
Office of Hearings and Appeals

Date: December 11, 2008